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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,375	12/03/2003	Russell Warner	BKCS 20.775 (331443-00003)	6387
5409	7590	02/08/2005	EXAMINER	
ARLEN L. OLSEN SCHMEISER, OLSEN & WATTS 3 LEAR JET LANE SUITE 201 LATHAM, NY 12110			BARRETT, SUZANNE LALE DINO	
			ART UNIT	PAPER NUMBER
			3676	
DATE MAILED: 02/08/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/728,375

Applicant(s)

WARNER, RUSSELL

Examiner

Suzanne Dino Barrett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 12, 14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-8,12,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sutton 4,788,893 in view of Thomas et al 5,337,632.

Both Sutton and Thomas et al teach a door opening angled device made of metal or plastic and having a hole at one end for a key ring or chain to be attached thereto. It is noted that the method and functional limitations regarding the use of the device on a frozen door are merely considered to be intended use of the device and are not accorded patentable weight. Specifically, Sutton teaches an angled device having substantially equal parts and having an angle therebetween of 45 degrees. While Sutton fails to provide an angle between 45-85, it is noted that Sutton further teaches in column 2, lines 60-64, that those skilled in the art will envision variations and be able to change the dimensions and shapes of various embodiments. Thomas et al teach an angled device having a constant width. It would have been obvious to one of ordinary skill in the art, given the teaching of Sutton in col.2, lines 60-64, to provide a constant width to the Sutton device as taught by Thomas et al as an obvious matter of design.

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choice in enhancing the strength of the prying device. It is further noted with respect to claim 15, that Official Notice is taken that the use of injection molding to manufacture a plastic version of a pry tool would have been an obvious option to one of ordinary skill in the art.

3. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sutton '893 in view of Thomas '632 as applied to claim 1 above, and further in view of Crowley 6,799,491 or Moses D164,705 or Waddell D442,840. Sutton fails to teach an angle between 65-85 degrees for the handle and pry surface. Crowley, Moses and Waddell are all examples of pry tools having an angle between the handle and pry portion in the range of 45-85 degrees. In view of the teaching in column 2, lines 60-64 of Sutton, it would have been obvious to one of ordinary skill in the art to modify the angle of Sutton to be between 60-85 degrees as set forth in claim 9, since the cited art teaches the desired range of angles for optimum prying functionality.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-9,12,14,15 have been considered but are moot in view of the new ground(s) of rejection.

In response to Applicant's request for reconsideration, the claims are rejected in view of Sutton and Thomas as previously set forth, but claim 9 is now rejected in view of the newly cited art which clearly shows the optimum angle range for a prying tool. It is noted that since the after final amendment of 12/15/04 was not entered, the pending claims are 1-9,12,14,15 as set forth in the amendment of 9/8/04. Accordingly, Sutton

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clearly teaches the 45 degree angle between the parts and therefor, the claimed range between 45-85 degrees of claim 1 is also taught. In addition, the constant width now claimed is clearly taught by Thomas et al as discussed above. It is reiterated that the method or functional limitations defining the intended use of the device are not accorded patentable weight. Accordingly, claims 1-9,12,14,15 stand rejected.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the pry tools with angled pry portions in varying ranges of 45-85 degrees.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzanne Dino Barrett whose telephone number is 703-308-0825. The examiner can normally be reached on M-Th 8:30-7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'SDB', is written over the printed name.

Suzanne Dino Barrett  
Primary Examiner  
Art Unit 3676

sdb